

Mail Stop: AMENDMENT

PATENT
8062-1040

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Rui KANO et al.

Conf. 3958

Application No. 10/588,903

Group 1644

Filed August 9, 2006

Examiner R. Schwadron

CANINE CD20 GENE

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

February 12, 2009

Sir:

In the Notice of Non-compliant Amendment dated February 6, 2009, it was indicated that the Amendment filed December 3, 2008 is non-compliant for not using the claim identifier "withdrawn" for the non-elected claims.

Applicants respectfully disagree and submit that the correct claim identifiers were used in the December 3, 2008 Amendment, since none of the claims had in fact been withdrawn as of that amendment.

In the December 3, 2008 Amendment, Applicants amended certain claims and made an election, with traverse, of Group I (claims 19-21). However, as of the December 3, 2008 Amendment, no claims had been officially withdrawn by the Examiner. Kindly note that it is the Examiner, and not the Applicant, that officially withdraws the non-elected claims after the Applicants' response

to restriction. Please see 37 CFR § 1.142 (b), which clearly states:

"Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled." [Emphasis added.]

See also M.P.E.P. § 821, and in particular, §§ 821.01-821.02, which confirms that the Examiner (not the Applicants) officially withdraws the non-elected claims after review of the Applicants' response to restriction.

It should be noted that Applicants have not yet received an Official Action officially withdrawing the non-elected claims. Accordingly, Applicants could not have used the claim identifier "withdrawn" in the December 3, 2008 Amendment. Therefore, it is believed that the correct claim identifiers were used in the December 3, 2008 Amendment, since none of the claims had in fact been withdrawn as of that amendment.

Favorable action on the merits is solicited.

Respectfully submitted,

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